

REMARKS

This is a full and timely response to the outstanding Advisory Action mailed December 22, 2003. Upon entry of the amendments in this response claims 1-47 are pending. More specifically, claims 1, 2, 3, 14, 15, 16, 21, 25 and 29 are amended; and claims 33-47 are added. These amendments are specifically described hereinafter. It is believed that the foregoing amendments add no new matter to the present application.

I. Present Status of Patent Application

The Advisory Action reiterated the rejections of the Final Office action. Claims 1, 10-14 and 17-32 stand rejected under 35 U.S.C 102(e) as allegedly being anticipated by *Shoff et al.* (U.S. Patent No. 5,758,258). Claims 2-9 and 15-16 stand rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over *Shoff et al.* in view of *Breyer et al.* (U.S. Patent No. 4,780,757).

II. Examiner Interview

An interview was conducted between Examiner Salce and Benjamin Balser at approximately 11:00 a.m. on Monday, February 02, 2004. Examiner Salce was responsive to Mr. Balser's proposed amendments to the independent claims over the *Shoff* reference and said that he would consider them when he received the response.

III. Rejections Under 35 U.S.C. §102(e)

A. Claims 1 and 10-13

The Office Action rejects claims 1, 10, 11, 12, and 13 under 35 U.S.C. §102(e) as allegedly being anticipated by *Shoff* (U.S. Patent No. 5,758,258). For the reasons set forth below, Applicants respectfully traverse the rejection.

Independent claim 1 as amended recites:

In a cable data delivery network for delivering digital data to a host location upon a subscriber initiated request, apparatus for authenticating that the subscriber is authorized to use said network, said apparatus comprising:

a network manager including at least one database of authorized users and a validation agent, said validation agent further comprising:

logic to authorize the subscriber to access a first communications path by comparing first identification information with at least part of the at least one database, the first communications path providing at least a portion of connectivity between the host location and a head end of the cable data delivery network; and

logic to authorize the subscriber to access a second communications path ***responsive to the first communications path authorization***, by comparing second identification information with at least part of the at least one database, the second communications path providing at least a portion of connectivity between the host location and the head end of the cable data delivery network.

For a proper rejection of a claim under 35 U.S.C. §102, the cited reference must disclose, teach, or suggest all elements/features/steps of the claim at issue. *See, e.g., E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 7 U.S.P.Q.2d 1129 (Fed. Cir. 1988).

Applicants respectfully submit that independent claim 1 as amended is allowable for at least the reason that *Shoff* does not disclose, teach, or suggest at least logic to authorize the subscriber to access a second communications path **responsive to the first communications path authorization**. The Office Actions allege that *Shoff* discloses a first identification information and a second identification information. However, each of the identifications can be entered singularly without the limitation of a first authorization followed by a second authorization that is responsive to the first authorization. In *Shoff*, there are several levels of service available with associated authorizations, but each authorization stands on its own. It does not follow a precedent authorization.

Notwithstanding, the undersigned has reviewed the entirety of the *Shoff* patent, and has failed to identify any such teaching anywhere within this reference. Therefore, *Shoff* does not anticipate claim 1 as amended, and the rejection should be withdrawn.

Because independent claim 1 as amended is allowable over the prior art of record, dependent claims 10 - 13 (which depend from independent claim 1) are allowable as a matter of law for at least the reason that dependent claims 10 - 13 contain all the steps/features of independent claim 1. See *Minnesota Mining and Manufacturing Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002) *Jeneric/Pentron, Inc. v. Dillon Co.*, 205 F.3d 1377, 54 U.S.P.Q.2d 1086 (Fed. Cir. 2000); *Wahpeton Canvas Co. v. Frontier Inc.*, 870 F.2d 1546, 10 U.S.P.Q.2d 1201 (Fed. Cir. 1989). Therefore, since dependent claims 10 - 13 are patentable over *Shoff*, the rejection to claims 10 - 13 should be withdrawn and the claims allowed.

Additionally and notwithstanding the foregoing reasons for allowability of independent claim 1 as amended, dependent claims 10 - 13 recite further features and/or combinations of features, as are apparent by examination of the claims themselves, that are patently distinct from the references of record. Hence there are other reasons why dependent claims 10 - 13 are allowable.

B. Claims 14 and 17-20

The Office Action rejects claims 14, 17, 18, 19, and 20 under 35 U.S.C. §102(e) as allegedly being anticipated by *Shoff* (U.S. Patent No. 5,758,258). For the reasons set forth below, Applicants respectfully traverse the rejection.

Independent claim 14 as amended recites:

A method of authorizing a subscriber to access a first communications path and a second communications path, the first communications path and the second communications path utilized in conveying data between a head end and the subscriber of a cable data network, the method comprising the steps of:

authorizing the subscriber to access the first communications path by comparing first identification information with at least part of at least one database; and

authorizing the subscriber to access the second communications path ***responsive to the first communications path authorization*** by comparing second identification information with at least part of the at least one database.

For a proper rejection of a claim under 35 U.S.C. §102, the cited reference must disclose, teach, or suggest all elements/features/steps of the claim at issue. *See, e.g., E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 7 U.S.P.Q.2d 1129 (Fed. Cir. 1988).

Applicants respectfully submit that independent claim 14 as amended is allowable for at least the reason that *Shoff* does not disclose, teach, or suggest at least authorizing the subscriber to access the second communications path **responsive to the first communications path authorization**. The Office Actions allege that *Shoff* discloses a first identification information and a second identification information. However, each of the identifications can be entered singularly without the limitation of a first authorization followed by a second authorization that is responsive to the first authorization. In *Shoff*, there are several levels of service available with associated authorizations, but each authorization stands on its own. It does not follow a precedent authorization.

Notwithstanding, the undersigned has reviewed the entirety of the *Shoff* patent, and has failed to identify any such teaching anywhere within this reference. Therefore, *Shoff* does not anticipate claim 14 as amended, and the rejection should be withdrawn.

Because independent claim 14 as amended is allowable over the prior art of record, dependent claims 17-20 (which depend from independent claim 14) are allowable as a matter of law for at least the reason that dependent claims 17-20 contain all the steps/features of independent claim 14. *See Minnesota Mining and Manufacturing Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002) *Jeneric/Pentron, Inc. v. Dillon Co.*, 205 F.3d 1377, 54 U.S.P.Q.2d 1086 (Fed. Cir. 2000); *Wahpeton Canvas Co. v. Frontier Inc.*, 870 F.2d 1546, 10

U.S.P.Q.2d 1201 (Fed. Cir. 1989). Therefore, since dependent claims 17-20 are patentable over *Shoff*, the rejection to claims 17-20 should be withdrawn and the claims allowed.

Additionally and notwithstanding the foregoing reasons for allowability of independent claim 14 as amended, dependent claims 17-20 recite further features and/or combinations of features, as are apparent by examination of the claims themselves, that are patently distinct from the references of record. Hence there are other reasons why dependent claims 17-20 are allowable.

C. Claims 21-24

The Office Action rejects claims 21, 22, 23 and 24 under 35 U.S.C. §102(e) as allegedly being anticipated by *Shoff* (U.S. Patent No. 5,758,258). For the reasons set forth below, Applicants respectfully traverse the rejection.

Independent claim 21 as amended recites:

An apparatus utilized in authorizing a subscriber to access a cable data network at a first level of service and a second level of service, the cable data network providing connectivity between a head end and the subscriber, comprising:

logic configured to authorize the subscriber to access the cable data network at the first level of service by comparing first identification information with at least part of at least one database; and

logic configured to authorize the subscriber to access the cable data network at the second level of service ***responsive to the first level of service authorization*** by comparing second identification information with at least part of the at least one database.

For a proper rejection of a claim under 35 U.S.C. §102, the cited reference must disclose, teach, or suggest all elements/features/steps of the claim at issue. *See, e.g., E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 7 U.S.P.Q.2d 1129 (Fed. Cir. 1988).

Applicants respectfully submit that independent claim 21 as amended is allowable for at least the reason that *Shoff* does not disclose, teach, or suggest at least logic configured to authorize the subscriber to access the cable data network at the second level of service **responsive to the first level of service authorization**. The Office Actions allege that *Shoff* discloses a first authorization and a second authorization. However, each of the authorizations can be achieved singularly without the limitation of a first authorization followed by a second authorization that is responsive to the first authorization. In *Shoff*, there are several levels of service available with associated authorizations, but each authorization stands on its own. It does not follow a precedent authorization.

Notwithstanding, the undersigned has reviewed the entirety of the *Shoff* patent, and has failed to identify any such teaching anywhere within this reference. Therefore, *Shoff* does not anticipate claim 21 as amended, and the rejection should be withdrawn.

Because independent claim 21 as amended is allowable over the prior art of record, dependent claims 22-24 (which depend from independent claim 21) are allowable as a matter of law for at least the reason that dependent claims 22-24 contain all the steps/features of independent claim 21. *See Minnesota Mining and Manufacturing Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002) *Jeneric/Pentron, Inc. v. Dillon Co.*, 205 F.3d 1377, 54 U.S.P.Q.2d 1086 (Fed. Cir. 2000); *Wahpeton Canvas Co. v. Frontier Inc.*, 870 F.2d 1546, 10 U.S.P.Q.2d 1201 (Fed. Cir. 1989). Therefore, since dependent claims 22-24 are patentable over *Shoff*, the rejection to claims 22-24 should be withdrawn and the claims allowed.

Additionally and notwithstanding the foregoing reasons for allowability of independent claim 21 as amended, dependent claims 22-24 recite further features and/or combinations of features, as are apparent by examination of the claims themselves, that are patently distinct from the references of record. Hence there are other reasons why dependent claims 22-24 are allowable.

D. Claims 25-28

The Office Action rejects claims 25, 26, 27, and 28 under 35 U.S.C. §102(e) as allegedly being anticipated by *Shoff* (U.S. Patent No. 5,758,258). For the reasons set forth below, Applicants respectfully traverse the rejection.

Independent claim 25 as amended recites:

A method of authorizing a subscriber to access a cable data network at a first level of service and a second level of service, the cable data network providing connectivity between a head end and the subscriber, the method comprising the steps of:

authorizing the subscriber to access the cable data network at the first level of service by comparing first identification information with at least part of at least one database; and

authorizing the subscriber to access the cable data network at the second level of service ***responsive to the first level of service authorization*** by comparing second identification information with at least part of the at least one database.

For a proper rejection of a claim under 35 U.S.C. §102, the cited reference must disclose, teach, or suggest all elements/features/steps of the claim at issue. *See, e.g., E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 7 U.S.P.Q.2d 1129 (Fed. Cir. 1988).

Applicants respectfully submit that independent claim 25 as amended is allowable for at least the reason that *Shoff* does not disclose, teach, or suggest at least authorizing the subscriber to access the cable data network at the second level of service **responsive to the first level of service authorization**. The Office Actions allege that *Shoff* discloses a first authorization and a second authorization. However, each of the authorizations can be entered singularly without the limitation of a first authorization followed by a second authorization that is responsive to the first authorization. In *Shoff*, there are several levels of service available with associated authorizations, but each authorization stands on its own. It does not follow a precedent authorization.

Notwithstanding, the undersigned has reviewed the entirety of the *Shoff* patent, and has failed to identify any such teaching anywhere within this reference. Therefore, *Shoff* does not anticipate claim 25 as amended, and the rejection should be withdrawn.

Because independent claim 25 as amended is allowable over the prior art of record, dependent claims 26-28 (which depend from independent claim 25) are allowable as a matter of law for at least the reason that dependent claims 26-28 contain all the steps/features of independent claim 25. See *Minnesota Mining and Manufacturing Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002) *Jeneric/Pentron, Inc. v. Dillon Co.*, 205 F.3d 1377, 54 U.S.P.Q.2d 1086 (Fed. Cir. 2000); *Wahpeton Canvas Co. v. Frontier Inc.*, 870 F.2d 1546, 10 U.S.P.Q.2d 1201 (Fed. Cir. 1989). Therefore, since dependent claims 26-28 are patentable over *Shoff*, the rejection to claims 26-28 should be withdrawn and the claims allowed.

Additionally and notwithstanding the foregoing reasons for allowability of independent claim 25 as amended, dependent claims 26-28 recite further features and/or combinations of features, as are apparent by examination of the claims themselves, that are patently distinct from the references of record. Hence there are other reasons why dependent claims 26-28 are allowable.

E. Claims 29-32

The Office Action rejects claims 29, 30, 31, and 32 under 35 U.S.C. §102(e) as allegedly being anticipated by *Shoff* (U.S. Patent No. 5,758,258). For the reasons set forth below, Applicants respectfully traverse the rejection.

Independent claim 29 as amended recites:

A method of claim logging into a cable data network that has a plurality of levels of service, the method comprising the steps of:

logging into the cable data network at a first level of service by sending first identification information to at least one validation agent; and

logging into the cable data network at a second level of service ***responsive to logging into the network at a first level of service*** by sending second identification information to at least one validation agent.

For a proper rejection of a claim under 35 U.S.C. §102, the cited reference must disclose, teach, or suggest all elements/features/steps of the claim at issue. *See, e.g., E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 7 U.S.P.Q.2d 1129 (Fed. Cir. 1988).

Applicants respectfully submit that independent claim 29 as amended is allowable for at least the reason that *Shoff* does not disclose, teach, or suggest at logging into the cable data network at a second level of service ***responsive to logging into the network at a first level of service***. The Office Actions allege that *Shoff* discloses a first level of service and a second level of service. However, each level of service can be achieved singularly without the limitation of a first level of service followed by a second level of service that is responsive to achieving the first level of service. In *Shoff*, there are several levels of service available with associated authorizations, but each level of service stands on its own. It does not follow a precedent level of service.

Notwithstanding, the undersigned has reviewed the entirety of the *Shoff* patent, and has failed to identify any such teaching anywhere within this reference. Therefore, *Shoff* does not anticipate claim 29 as amended, and the rejection should be withdrawn.

Because independent claim 29 as amended is allowable over the prior art of record, dependent claims 30-32 (which depend from independent claim 29) are allowable as a matter of law for at least the reason that dependent claims 30-32 contain all the steps/features of independent claim 29. *See Minnesota Mining and Manufacturing Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002) *Jeneric/Pentron, Inc. v. Dillon Co.*, 205 F.3d 1377, 54 U.S.P.Q.2d 1086 (Fed. Cir. 2000); *Wahpeton Canvas Co. v. Frontier Inc.*, 870 F.2d 1546, 10 U.S.P.Q.2d 1201 (Fed. Cir. 1989). Therefore, since dependent claims 30-32 are patentable over *Shoff*, the rejection to claims 30-32 should be withdrawn and the claims allowed.

Additionally and notwithstanding the foregoing reasons for allowability of independent claim 29 as amended, dependent claims 30-32 recite further features and/or combinations of

features, as are apparent by examination of the claims themselves, that are patently distinct from the references of record. Hence there are other reasons why dependent claims 30-32 are allowable.

IV. Rejections Under 35 U.S.C. §103(a)

A. Claims 2-9

The Office Action rejects claims 2-9 under 35 U.S.C. §103(a) as allegedly being unpatentable over *Shoff* et al. (U.S. Patent No. 5,758,258) in view of *Bryer* et al. (U.S. Patent No. 4,780,757). For the reasons set forth below, Applicants respectfully traverse the rejection.

As provided hereinabove, the *Shoff* reference does not disclose logic to authorize the subscriber to access a second communications path **responsive to the first communications path authorization**. Likewise, *Breyer* also does not disclose such a system. Therefore, since neither reference discloses logic to authorize the subscriber to access a second communications path responsive to the first communications path authorization, the combination of the two cannot disclose logic to authorize the subscriber to access a second communications path responsive to the first communications path authorization. It is also not obvious to modify the system of either reference or their combination to include such a limitation. Therefore, the rejection to claims 2-9 should be withdrawn.

Additionally, because independent claim 1 as amended is allowable over the prior art of record, dependent claims 2-9 (which depend from independent claim 1) are allowable as a matter of law for at least the reason that dependent claims 2-9 contain all the steps/features of independent claim 1. See *Minnesota Mining and Manufacturing Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002) *Jeneric/Pentron, Inc. v. Dillon Co.*, 205 F.3d 1377, 54 U.S.P.Q.2d 1086 (Fed. Cir. 2000); *Wahpeton Canvas Co. v. Frontier Inc.*, 870 F.2d 1546, 10 U.S.P.Q.2d 1201 (Fed. Cir. 1989). Therefore, the rejection to claims 2-9 should be withdrawn and the claims allowed.

Additionally and notwithstanding the foregoing reasons for allowability of independent claim 1 as amended, dependent claims 2-9 recite further features and/or combinations of features,

as are apparent by examination of the claims themselves, that are patently distinct from the prior art of record. Hence there are other reasons why dependent claims 2-9 are allowable.

Moreover, newly added claim 43 (which depends from dependent claim 7) specifically refers to the feature of the modem electronic serial number. In one implementation, the modem electronic serial number is generally referred to as a MAC address of the modem. Neither *Shoff* nor *Breyer* discloses a modem electronic serial number; nor does either one disclose a MAC address. It would also not be obvious to use a modem electronic serial number in light of the combination of the two cited references.

B. Claims 15-16

The Office Action rejects claims 15-16 under 35 U.S.C. §103(a) as allegedly being unpatentable over *Shoff* et al. (U.S. Patent No. 5,758,258) in view of *Bryer* et al. (U.S. Patent No. 4,780,757). For the reasons set forth below, Applicants respectfully traverse the rejection.

As provided hereinabove, the *Shoff* reference does not disclose logic to authorize the subscriber to access a second communications path **responsive to the first communications path authorization**. Likewise, *Breyer* also does not disclose such a system. Therefore, since neither reference discloses logic to authorize the subscriber to access a second communications path responsive to the first communications path authorization, the combination of the two cannot disclose logic to authorize the subscriber to access a second communications path responsive to the first communications path authorization. It is also not obvious to modify the system of either reference or their combination to include such a limitation. Therefore, the rejection to claims 15-16 should be withdrawn.

Additionally, because independent claim 14 as amended is allowable over the prior art of record, dependent claims 15-16 (which depend from independent claim 14) are allowable as a matter of law for at least the reason that dependent claims 15-16 contain all the steps/features of independent claim 14. See *Minnesota Mining and Manufacturing Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002) *Jeneric/Pentron, Inc. v. Dillon Co.*, 205 F.3d 1377, 54 U.S.P.Q.2d 1086 (Fed. Cir. 2000); *Wahpeton Canvas Co. v. Frontier Inc.*, 870 F.2d 1546, 10

U.S.P.Q.2d 1201 (Fed. Cir. 1989). Therefore, the rejection to claims 15-16 should be withdrawn and the claims allowed.

Additionally and notwithstanding the foregoing reasons for allowability of independent claim 14 as amended, dependent claims 15-16 recite further features and/or combinations of features, as are apparent by examination of the claims themselves, that are patently distinct from the prior art of record. Hence there are other reasons why dependent claims 15-16 are allowable.

V. References Made of Record

The references made of record have been considered, but are not believed to affect the patentability of the presently pending claims. Other statements not explicitly addressed herein are not admitted.

CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicants respectfully submit that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 1-47 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,



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